

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Health Care)	CC Docket No. 02-60
Universal Service Support Mechanism)	
)	
Petition for Reconsideration)	
By Utah Education and Telehealth Network)	

PETITION FOR RECONSIDERATION

Pursuant to section 1.106 of the Commission’s rules,¹ the Utah Education and Telehealth Network (UETN) respectfully requests that the Wireline Competition Bureau (Bureau) reconsider its decision to deny UETN’s request for waiver of the Rural Health Care (RHC) Program’s competitive bidding requirements.² The Bureau denied UETN’s request and upheld USAC’s decision that UETN had violated the RHC competitive bidding rules by applying for funding using E-rate contracts that were not “approved.” UETN respectfully argues that the Commission’s rules and precedent, as well as USAC’s guidance, are unclear regarding what constitutes “approval” of an E-rate contract for purposes the Healthcare Connect Fund (HCF) competitive bidding exemption. Because of this lack of clarity, the Bureau should not have upheld USAC’s denials of more than \$1.3 million in funding on that basis. In addition, the Bureau’s denial inappropriately deferred to USAC’s findings, even though the Bureau is required to apply a *de novo* standard to USAC appeals. For these reasons, UETN respectfully asks the Bureau to reconsider its decision.

¹ 47 C.F.R. § 1.106.

² UETN comprises the Utah Telehealth Network (UTN) and the Utah Education Network (UEN). The former is responsible for Rural Health Care funding, and the latter is responsible for E-rate funding.

In the alternative, UETN respectfully renews its request that the Bureau waive the HCF competitive bidding rules to the extent necessary to grant the requested relief.

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I. BACKGROUND

The Utah Education and Telehealth Network is the state of Utah's designated and duly authorized statewide education and telehealth network. The Utah Telehealth Network (UTN) component of UETN is responsible for developing telehealth services as a means of reducing health care costs and increasing health care quality and access, with an emphasis on assisting rural health care providers and special populations.³ E-rate contracts constitute the overwhelming majority of UETN's procurement and contracting. The taxpayers of Utah expect UETN to accomplish its statutory goals in the most efficient and sensible manner available.

Each year preceding the next E-rate funding year, UETN issues a large Request for Proposal for telecommunications and Internet access services, as UETN is responsible for procurement of these services for all of the state's public schools and libraries. In 2017, UETN included rural health locations as part of that procurement, in order to get better rates for its rural health care locations. Typically, because the previous rural health care procurements were smaller, UETN did not receive the lower rates that carriers bid for its E-rate services.

In June 2017, UETN applied for RHC Healthcare Connect Fund funding for funding year 2017. Rather than conduct a competitive bidding process just for its HCF funding requests, UETN used competitively bid and negotiated E-rate contracts as the basis for its rural health care funding requests, pursuant to the exemption to the HCF competitive bidding requirements in section 54.642(h)(5) of the Commission's rules.⁴

³ See Utah Code § 53-B-17-105.

⁴ 47 C.F.R. § 54.642(h)(5).

On July 28, 2017, USAC denied UETN's requests for HCF funding.⁵ USAC stated the following as its reason for denying the requests: "USAC has denied [these FRNs] because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. This contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program."⁶

UETN filed a timely appeal, which USAC denied on September 28, 2018.⁷ In its denial, USAC "determined that [FCC] requirements support the denial of the FRNs . . . because UETN's contracts were not approved as master contracts in the . . . E-rate program, at the time the FCC Forms 462 were submitted."⁸ USAC concluded that UETN's E-rate contracts could not be used in HCF funding requests because "the contracts had been submitted to USAC, but were not yet approved by USAC."⁹

UETN filed an appeal of USAC's decision with the Commission on November 26, 2018.¹⁰ On March 29, 2019, the Bureau denied UETN's request for waiver.¹¹ The Bureau concluded that "[t]he contract at issue . . . did not receive approval for use in the E-rate program until three to eight months after the health care providers submitted their FCC Forms 462 to

⁵ Exhibit 1, FCC Form 462 Denial Notices.

⁶ *Id.*

⁷ Exhibit 2, USAC Appeal Denial.

⁸ *Id.* at 1.

⁹ *Id.* at 4.

¹⁰ Utah Education and Telehealth Network, FRNs 17267181, 17269321, 17270941, 17273181, 17273581, 17274321, 17281301, Request for Waiver, WC Docket No. 02-60 (filed Nov. 26, 2018).

¹¹ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 19-213 (rel. Mar. 29, 2019) (*Public Notice*).

[USAC] for processing,” and that the RHC competitive bidding exemption thus did not apply.¹² The Bureau also stated that UETN “has not presented evidence demonstrating that USAC erred in its decisions.”¹³

Petitions for reconsideration are due within 30 days of public notice of a final Commission action.¹⁴ As such, this petition is timely filed.

II. RECONSIDERATION IS WARRANTED BECAUSE THE BUREAU’S INTERPRETATION OF THE E-RATE CONTRACT EXEMPTION WAS NOT CLEAR TO APPLICANTS

UETN respectfully asks the Bureau to reconsider its denial because, by upholding USAC’s underlying decision, the Bureau upheld an interpretation of the E-rate contract exemption to the HCF competitive bidding rules that the Commission itself has never specified. The Commission’s rules provide an exemption to the HCF competitive bidding requirements “if the contract was approved in the schools and libraries universal service support program as a master contract.”¹⁵ But the rule does not explain what “approved” means in this context, nor does the order that adopted the rule or any other Commission order, nor does USAC’s website. This lack of explanation is significant because USAC does not “approve” applicant contracts in the E-rate program; USAC merely ensures there was a signed contract before the application was submitted. Nevertheless, USAC and the Bureau have apparently determined that “approved” means that USAC has issued a funding commitment decision letter (FCDL) for the E-rate funding request associated with the contract. Given that the Commission has never authorized this interpretation of the term “approved,” it was inappropriate for USAC to deny UETN’s

¹² *Id.* at 11 n.24.

¹³ *Id.*

¹⁴ 47 C.F.R. § 1.106(f).

¹⁵ 47 C.F.R. § 54.642(h)(5).

funding requests on this basis, and for the Bureau to uphold that decision. UETN therefore asks that the Bureau grant its petition for reconsideration.

UETN recognizes that it is the applicant's responsibility to ensure that it complies with the Commission's rules, and emphasizes that it is not trying to shirk that responsibility. UETN simply asks that the Bureau consider how challenging it is for an applicant to ensure compliance with a rule when neither the Commission itself nor USAC can articulate the requirements of the rule clearly and consistently. The rule states that the E-rate contract exemption may be used "if the contract was *approved in the schools and libraries universal service support program* as a master contract." But the Commission used a variety of other formulations to describe the contract requirement in the *HCF Order* (emphasis added throughout):

- The heading of the subsection adopting the rule is "Contracts *Negotiated Under E-Rate*."
- Later in the subsection, the Commission describes the exemption as "a competitive bidding exemption for HCPs entering into contracts *negotiated under the E-rate program*."
- The *HCF Order* also uses the phrases "approved for use in the E-rate program as a master contract" and "approved as a master contract in the E-rate program."

USAC's descriptions of the contract requirement are even less consistent with the language of the rule (emphasis added throughout):

- On its web page describing the exemptions from the HCF competitive bidding requirements, the word "approved" does not appear at all. USAC describes the E-rate contract exemption as "Using a contract *negotiated* under the Schools and Libraries (E-rate) Program."¹⁶
- In its denial of UETN's HCF funding requests, USAC cited as its reason for denial that the "contract for this funding request has not yet been *endorsed as E-Rate* in the Schools and Libraries Program."¹⁷

¹⁶ Exhibit 3, USAC Website, Competitive Bidding Exemptions.

¹⁷ Exhibit 1, FCC Form 462 Denial Notices, at 1.

- In its denial of UETN’s appeal, USAC’s cited reason for denial relied on the standard in the rule, slightly paraphrased: “UTN’s contracts were not approved as master contracts in the Schools and Libraries program . . . at the time the FCC Forms 462 were submitted.”¹⁸ At the same time, though, USAC tacitly conceded that the guidance on its website featured a different standard,¹⁹ and to this day USAC has not changed the language on its website from “negotiated” to “approved.”²⁰

To be clear, UETN understands that when there are variations or discrepancies between the language of a rule and the language used elsewhere by the Commission or USAC, the language of the rule controls. But here, the language of the rule cannot be the end of the story, because the word “approved” has no generally accepted meaning in the E-rate program. There is no mechanism for “approving” contracts in the E-rate program, and thus no definition of what “approval” might mean with respect to contracts for E-rate funded services.²¹ In UETN’s experience, E-rate FCDLs have never been spoken of or thought of as contract approvals. Thus the word “approved” in the context of E-rate contracts was, from the beginning, unclear at best and meaningless at worst. Yet nowhere—not in the *HCF Order*, not in the rule, and clearly not on USAC’s website—is there any explanation of what “approved” means for purposes of the exemption. And this lack of certainty has been exacerbated by all the different ways the Commission and USAC have described the exemption.

In spite of all this uncertainty, both USAC and the Bureau have apparently concluded (or presumed) that an E-rate contract is “approved” when USAC issues an FCDL authorizing funding pursuant to that contract. But the Commission itself has never said that, as far as UETN knows, and the Bureau’s denial cites no Commission precedent in support of that interpretation.

¹⁸ Exhibit 2, USAC Appeal Denial, at 1.

¹⁹ *Id.* at 3.

²⁰ Exhibit 3, USAC Website, Competitive Bidding Exemptions.

²¹ By contrast, in the RHC program USAC *does* approve some contracts. See 47 C.F.R. § 54.642(h)(4) (explaining the process for seeking USAC approval of evergreen contracts).

Nowhere in USAC's decisions or the Bureau's decision is there any acknowledgment that the standard for claiming the E-rate contract exemption to the HCF competitive bidding rules is vague. After using the fuzzy term "endorsed as E-Rate" in its funding denial, in its appeal denial USAC suddenly spoke as though UETN had violated a bright-line rule, and the Bureau upheld this conclusion. In reality, though, both the Commission's language and USAC's language force applicants to draw their own conclusions about what the rule requires, and do their best to comply.

Contrary to the Bureau's decision, the E-rate contract exemption rule is not a clear standard. Both USAC and the Bureau erred in requiring UETN to comply with a requirement that the Commission itself has never articulated. UETN therefore respectfully asks the Bureau to reconsider its decision.

III. RECONSIDERATION IS WARRANTED BECAUSE THE BUREAU SHOULD HAVE APPLIED A *DE NOVO* STANDARD OF REVIEW

UETN respectfully seeks reconsideration on the separate ground that the Bureau applied the wrong standard of review to the underlying appeal. The Bureau concluded that UETN had "not presented evidence demonstrating that USAC erred in its decisions."²² But the Bureau is not permitted to defer to USAC's analyses and decisions; under longstanding Commission precedent, the Bureau is required to conduct a *de novo* review of all appeals of USAC

²² *Public Notice* at 11 n.24.

decisions.²³ The Commission has found that *de novo* review is “consistent with the Commission’s ultimate responsibility over the universal service support mechanisms.”²⁴

Rather than simply defer to USAC’s analysis of whether UTN’s applications for funding satisfied the HCF competitive bidding exemption, the Bureau was obligated to conduct its own analysis and draw its own conclusion. As we have explained, any meaningful analysis of the issue must necessarily address the ambiguities inherent in the rule language. Because the Bureau did not conduct such an analysis in its denial, UETN respectfully requests reconsideration.

IV. A WAIVER OF THE COMMISSION’S RULE IS IN THE PUBLIC INTEREST

Finally, should the Bureau decline to reconsider its underlying decision, UETN respectfully renews its request for a waiver of the HCF competitive bidding requirements. A waiver would advance the RHC program’s goals and would be in the public interest.

Any of the Commission’s rules may be waived if good cause is shown.²⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁷

²³ *Changes to the Board of Directors of the National Exchange Carrier Association; Federal State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Third Report and Order, Fourth Order on Reconsideration, and Eighth Order on Reconsideration, 13 FCC Rcd 25058, 25092 ¶ 69 (1998) (declining to adopt USAC’s recommendation that the Commission “uphold USAC decisions without considering the merits of the appeal if the Commission finds that USAC has not exceeded its authority and has acted consistently with the Commission’s rules”).

²⁴ *Id.*

²⁵ 47 C.F.R. § 1.3.

²⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

UETN respectfully argues that the circumstances here warrant a waiver. Denying HCF funding because E-rate funding requests had not yet been granted harms UETN without advancing program goals or the public interest. There is no concern about harm to the competitive bidding process or to the Fund, because UETN's procurements complied with the E-rate competitive bidding rules, which arguably impose a higher standard than the RHC rules by mandating that price be the primary factor considered.

Further, as explained in the underlying appeal, UETN acted in good faith at all times and did its best to ensure that it was complying with the rule. Not only was there no waste, fraud, or abuse, but in fact UETN was specifically seeking to *avoid* waste and obtain better rates for HCF-funded services by using the same procurements for E-rate and HCF funding requests. When an applicant does its best to comply with an unclear rule, UETN respectfully argues that the circumstances warrant a waiver of that rule.

Indeed, a waiver would advance the policy considerations that the Commission outlined when it adopted the E-rate contract exemption. The Commission found that "a competitive bidding exemption for HCPs entering into contracts negotiated under the E-rate program will further our program goals to streamline the application process, facilitate consortium applications, and promote fiscal responsibility and cost-effectiveness."²⁸ As UETN explained in the underlying appeal, the effect of USAC's decision—and the Bureau's decision to uphold that decision—is to require applicants to wait until the following funding year to file HCF funding requests, because by the time USAC issues FCDLs for E-rate funding, the deadline for applying for HCF funding in the same funding year has already passed. There is no indication in the *HCF*

²⁸ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16793 ¶ 267 (2012) (*HCF Order*).

Order that the Commission intended this result, and indeed, requiring applicants invoking the E-rate contract exemption to wait a year is antithetical to the policy considerations the Commission cited for adopting the exemption in the first place.


Finally, a waiver is appropriate because USAC could have simply waited for UETN's E-rate funding commitments to be approved before considering its HCF funding requests. UETN began receiving the FCDLs for its E-rate funding requests only a few months after filing its RHC applications. In funding year 2017, USAC did not issue any RHC funding commitments until March 2018. USAC, however, denied UETN's HCF funding requests in July 2017. If USAC thought that the E-rate contracts would be "approved" when USAC's E-rate division issued FCDLs, USAC's RHC division could have simply waited until the E-rate FCDLs were issued before considering UETN's HCF funding requests. In fact, UETN's E-rate FCDLs were issued before USAC decided the issue on appeal. USAC could have granted UETN's appeal based on the fact that the E-rate review process had been completed at that time and the E-rate contracts were now "approved." But instead, USAC chose to deny almost \$1.3 million in HCF funding over a timing issue that it could have easily remedied. Penalizing UETN in this manner is contrary to the goals of the program.

For these reasons, UETN respectfully renews its request for waiver of the HCF competitive bidding requirements.


V. CONCLUSION

For the foregoing reasons, UETN respectfully requests that the Bureau grant this petition for reconsideration. In the alternative, UETN asks that the Bureau waive the Healthcare Connect Fund competitive bidding requirements to the extent necessary to grant the requested relief.

Respectfully submitted,



Dr. Ray Timothy
Executive Director and CEO
Utah Education and Telehealth Network
101 Wasatch Drive
Salt Lake City, UT 84112
rtimothy@uen.org
(801)581-6991



Gina Spade
Broadband Legal Strategies
1629 K Street, NW Suite 300
Washington, DC 20006
gina@broadbandlegal.com
(202) 907-6252

*Counsel for Utah Education and Telehealth
Network*

April 25, 2019

CERTIFICATE OF SERVICE

This is to certify that on this 25th day of April, 2019, a true and correct copy of the foregoing Petition for Reconsideration was sent via email to:

SLD, Universal Service Administrative Company, Appeals@USAC.org

/s/ Theresa Schrader

Exhibit List

- | | |
|-----------|---|
| Exhibit 1 | FCC Form 462 Denial Notices |
| Exhibit 2 | USAC Appeal Denial |
| Exhibit 3 | USAC Website Screenshot, Competitive Bidding Exemptions |

EXHIBIT 1

From: rhcadmin@usac.org
To: [Sabrina Scott](#)
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 2:30:58 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17273181

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

All account holders associated with the HCP will be copied on this and all correspondence from USAC related to this account.

Next Steps

If you wish to appeal this decision, you must file an appeal with USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available on the USAC website at <http://usac.org/about/about/program-integrity/appeals.aspx>.

For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, or if this email has been received in error, contact the Rural Health Care Program Help Desk at (800) 453-1546 between 8 AM and 5 PM Monday - Friday or by email at rhc-assist@usac.org.

For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

From: rhcadmin@usac.org
To: [Sabrina Scott](#)
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 2:31:16 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17270941

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

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For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

From: rhcadmin@usac.org
To: [Sabrina Scott](#)
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 2:31:21 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17269321

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

All account holders associated with the HCP will be copied on this and all correspondence from USAC related to this account.

Next Steps

If you wish to appeal this decision, you must file an appeal with USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available on the USAC website at <http://usac.org/about/about/program-integrity/appeals.aspx>.

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For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

From: rhcadmin@usac.org
To: [Sabrina Scott](#)
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 2:30:45 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17267181

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

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For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

From: rhcadmin@usac.org
To: [Sabrina Scott](#)
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 2:21:27 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17281301

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

All account holders associated with the HCP will be copied on this and all correspondence from USAC related to this account.

Next Steps

If you wish to appeal this decision, you must file an appeal with USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available on the USAC website at <http://usac.org/about/about/program-integrity/appeals.aspx>.

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For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

From: rhcadmin@usac.org
To: [Deb LaMarche](#)
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 1:21:23 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17273581

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

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For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

From: rhcadmin@usac.org
To: Deb LaMarche
Subject: RHC HCF Program - FCC Form 462 - Denial Notice - HCP# 17264
Date: Friday, July 28, 2017 1:21:45 PM
Attachments: [Form 462.pdf](#)

Date: 28-Jul-2017
Program: HCF Program
Funding Year: 2017
Health Care Provider (HCP) Number: 17264
HCP Name: Utah Telehealth Network
FCC Form 462 Application Number: 17274321

The Universal Service Administrative Company (USAC)'s Rural Health Care (RHC) Program has reviewed the submitted FCC Form 462 and supporting documents for the HCP referenced above. USAC has denied the HCP's FCC Form 462 for the following reason(s):

- **USAC has denied this FRN for funding because the E-Rate Competitive Bidding Exemption requested by the FCC Form 462 cannot be granted. The contract for this funding request has not yet been endorsed as E-Rate in the Schools and Libraries program.**

All account holders associated with the HCP will be copied on this and all correspondence from USAC related to this account.

Next Steps

If you wish to appeal this decision, you must file an appeal with USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available on the USAC website at <http://usac.org/about/about/program-integrity/appeals.aspx>.

For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, or if this email has been received in error, contact the Rural Health Care Program Help Desk at (800) 453-1546 between 8 AM and 5 PM Monday - Friday or by email at rhc-assist@usac.org.

For more information about the HCF Program application process, refer to the HCF Program Getting Started web page at <http://www.usac.org/rhc/healthcare-connect/process-overview/default.aspx>.

For more information about the FCC Form 462, visit the HCF Program Forms web page at <http://www.usac.org/rhc/healthcare-connect/tools/forms>.

EXHIBIT 2

Administrator's Decision on Rural Health Care Program Appeal

Via Electronic Mail

September 27, 2018

Ms. Deb LaMarche
Utah Telehealth Network
101 Wasatch Drive, Room 215
Salt Lake City, UT 84112

Re: Utah Telehealth Network – Appeal of USAC's Decision for the
Funding Request Numbers Listed in Appendices A and B

Dear Ms. LaMarche:

The Universal Service Administrative Company (USAC) has completed its evaluation of the August 11, 2017 letters of appeal (Appeal) submitted by Utah Telehealth Network (UTN), health care provider (HCP) number 17264.¹ On July 28, 2017, USAC denied UTN's funding requests for support under the federal Universal Service Healthcare Connect Fund Program (HCF Program) for funding year (FY) 2017.² The Appeal requests that USAC reverse the denial of the FY 2017 funding request numbers (FRNs) listed in Appendices A and B (Appeal FRNs) and consider funding the FRNs in the HCF Program.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that the Federal Communications Commission (FCC) requirements support the denial of the FRNs listed in Appendix A because UTN's contracts were not approved as master contracts in the Schools and Libraries program, also known as the E-rate program, at the time the FCC Forms 462 were submitted. USAC has also determined that the FCC requirements do not support the denial of FRN 17275101 for failure to qualify as an E-rate competitive bidding exemption, since the FCC Form 462 was filed as a Government Master Services Agreement (MSA) exemption. Therefore, USAC will reverse the denial of funding for FRN 17275101. Based on HCF Program rules and requirements, USAC denies the Appeal for the FRNs listed in Appendix A, and will reverse its decision and continue with its review of the funding request for FRN 17275101, listed in Appendix B.

¹ See Emails from Sabrina Scott, Utah State E-rate Coordinator, Utah Education and Telehealth Network (UTN), to the Rural Health Care Division, USAC (Aug. 11, 2017) (Appeal).

² See Emails from the Rural Health Care Division, USAC, to Sabrina Scott, UTN (July 28, 2017) (Administrator's Denials of Appendix A FRNs); See Email from the Rural Health Care Division, USAC, to Sabrina Scott, UTN (July 28, 2017) (Administrator's Denial of FRN 17275101).

³ *Id.*

Background

FCC rules require applicants participating in the HCF Program to engage in a competitive bidding process for supported services, facilities, or equipment, unless they qualify for one or more exemptions.⁴ The acceptable competitive bidding exemptions in the HCF Program are: (1) annual undiscounted cost of \$10,000 or less; (2) Government MSAs; (3) MSAs approved under the Pilot Program or HCF Program; (4) Evergreen contracts; or (5) Schools and Libraries program master contracts.⁵ An applicant who utilizes a competitive bidding exemption does not need to file the FCC Form 461 (Request for Services Form) and may proceed directly to filing an FCC Form 462 (Funding Request Form).⁶ The HCP uses the FCC Form 462 to provide information about the services selected and certify that those services are the most cost-effective option of the offers received.⁷

HCPs participating in a consortium may be eligible to utilize the Schools and Libraries Program master contracts competitive bidding exemption (“E-rate exemption”). FCC rules state that, “an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium’s existing contract is exempt from the Healthcare Connect Fund competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract.”⁸ In order for an HCP to qualify for the Government MSA exemption, the services and equipment must be “purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others” and the MSAs must have been “awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements.”⁹

UTN’s Funding Requests

On June 30, 2017, UTN submitted seven FY 2017 FCC Forms 462 for leased/tariffed facilities or services claiming the E-rate Approved Contract exemption on line 8 of the FCC Forms 462.¹⁰ Attached to its FY 2017 FCC Forms 462 were copies of the “E-rate approved contracts.”¹¹ During the review of the FRNs listed in Appendix A, USAC reviewed the statuses of the relevant E-rate forms and determined that the FCC Forms 471 (Description of Services Ordered and Certification

⁴ 47 C.F.R. § 54.642(a).

⁵ 47 C.F.R. § 54.642(h).

⁶ 47 C.F.R. § 54.642(a); see Rural Health Care (RHC) Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804 (July 2014) (*FCC Form 462*); FCC Form 462 Instructions, Rural Health Care Universal Service, Healthcare Connect Fund, Funding Request Form, OMB 3060-0804, at 2-3 (Aug. 5, 2014) (*FCC Form 462 Instructions*).

⁷ See USAC, Healthcare Connect Fund Program: Step 6 Submit Funding Requests, available at <http://www.usac.org/rhc/healthcare-connect/individual/step06/default.aspx> (last visited August 20, 2018).

⁸ 47 C.F.R. § 54.642(h)(5).

⁹ 47 C.F.R. § 54.642(h)(2).

¹⁰ See FY 2017 FCC Forms 462 listed in Appendix A.

¹¹ *Id.*

Form) containing the “E-rate approved contracts” had not yet been processed. On July 28, 2017, USAC denied UTN’s FRNs listed in Appendix A because the E-rate contracts were not approved as master contracts in the E-rate program at the time the FY 2017 FCC Forms 462 were filed with USAC.¹²

Also on June 30, 2017, UTN submitted a FY 2017 FCC Form 462 requesting support for network equipment from ConvergeOne, Inc., claiming a Government MSA exemption on line 8 of the FCC Form 462.¹³ UTN attached to its FY 2017 FCC Form 462 a copy of the “Government Master Services Agreement” and a summary of the equipment being sought by the consortium.¹⁴ On July 28, 2017, USAC denied FRN 17275101 because the E-rate contract was not approved as a master contract in the E-rate program at the time the FY 2017 FCC Form 462 was filed with USAC.¹⁵

UTN’s Appeal

On August 11, 2017, UTN submitted the Appeal requesting that USAC rescind the commitment decision denials and consider further action regarding commitment decisions for the Appeal FRNs.¹⁶ In the Appeal, UTN states that it “negotiated and executed numerous E-rate contracts resulting from a comprehensive Request for Proposal issued under the FCC E-rate and Utah State procurement rules and regulations.”¹⁷ UTN also asserts that, based on 47 C.F.R. § 54.642, “USAC’s denial of [each] funding request is premature until SLD has issued E-rate commitment decisions” and that, based upon USAC’s published guidance that an applicant who uses a contract negotiated under the E-rate program is exempt from competitive bidding, “these funding requests should have been approved outright.”¹⁸

Subsequent to filing the Appeal, UTN also sent email confirmations of the E-rate contract approvals related to FRNs 17267181, 17269321, 17270941, 17273181, 17273581, and 17281301 with the assertion that “the rationale for the denial of [the associated FRNs] no longer applies and that UTN complied with the HCF competitive bidding exemption standard afforded E-rate negotiated contracts.”¹⁹

Administrator’s Decision on Appeal

Decision on Appeal for the FRNs listed in Appendix A

In order for the FRNs listed in Appendix A to be exempt from competitive bidding under the E-rate

¹² See Administrator’s Denials of Appendix A FRNs.

¹³ FY 2017 FCC Form 462 for FRN 17275101 (June 30, 2017).

¹⁴ *Id.*

¹⁵ See Administrator’s Denial of FRN 17275101.

¹⁶ See generally Appeal.

¹⁷ *Id.*

¹⁸ *Id.*; see also USAC, Healthcare Connect Fund Program: Step 4 Prepare for Competitive Bidding, available at <https://www.usac.org/rhc/healthcare-connect/Consortia/step04/exemptions.aspx> (last visited August 20, 2018).

¹⁹ Emails from Sabrina Scott, UTN to RHC Appeals, USAC (Nov. 9, 2017 and Jan. 26, 2018) (Contract Approvals).

Ms. Deb LaMarche
Utah Telehealth Network
September 27, 2018
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program master contract exemption, FCC rules state that the contract must have been “*approved* in the schools and libraries universal service support program as a master contract”²⁰ (emphasis added). At the time the FY 2017 FCC Forms 462 for the FRNs listed in Appendix A were submitted (*i.e.*, the E-rate program master contract exemptions were claimed), the contracts had been submitted to USAC, but were not yet approved by USAC.²¹ Because USAC is not authorized to waive the FCC’s rules and requirements for the HCF Program,²² USAC is unable to reverse its denial of UTN’s funding requests listed in Appendix A and hereby denies that portion of the Appeal.

Decision on Appeal for FRN 17275101

UTN claimed a Government MSA exemption for FRN 17275101 and requested support for network equipment.²³ During USAC’s review of the FCC Form 462 and the supporting documentation, USAC did not review the contract uploaded to the FCC Form 462 for compliance with FCC rules and requirements governing Government MSAs. In addition, USAC did not confirm with UTN what functions the network equipment would perform. Therefore, USAC reverses the denial for FRN 17275101, listed in Appendix B, and will proceed with its review of this funding request.

If you wish to appeal this decision or request a waiver, you can follow the instructions pursuant to 47 C.F.R. Part 54, Subpart I (47 C.F.R. §§ 54.719 to 725). Further instructions for filing appeals or requesting waivers are available at:

<http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Sincerely,

/s/ Universal Service Administrative Company

cc: Sabrina Scott, Utah Education and Telehealth Network

²⁰ 47 C.F.R. § 54.642(h)(5) (emphasis added).

²¹ See Appendix A FRNs.

²² See generally, 47 C.F.R. § 54.702(c) (2014) (“[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.”); 47 C.F.R. § 1.3 (2014) (“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter.”).

²³ FY 2017 FCC Form 462 for FRN 17275101 (June 30, 2017).

Appendix A
List of Appealed FRNs Claiming E-rate Approved Contract Exemption

FRN	Service Provider	FCC Form 466	E-rate FRN and Contract Approval Date
17267181	All West Communications, Inc.	FY 2017 FCC Form 462 for FRN 17267181 (June 30, 2017)	1799076991 (Dec. 1, 2017)
17269321	South Central Utah Telephone Association, Inc	FY 2017 FCC Form 462 for FRN 17269321 (June 30, 2017)	1799067528 (Sept. 1, 2017)
17270941	CenturyLink Qwest Corporation	FY 2017 FCC Form 462 for FRN 17270941 (June 30, 2017)	1799106755 (Sept. 8, 2017)
17273181	Central Utah Telephone Inc.	FY 2017 FCC Form 462 for FRN 17273181 (June 30, 2017)	1799067558 (Jan. 18, 2018)
17273581	EMERY TELEPHONE	FY 2017 FCC Form 462 for FRN 17273581 (June 30, 2017)	1799075392 (Jan. 13, 2018)
17274321	Comcast Business Communications	FY 2017 FCC Form 462 for FRN 17274321 (June 30, 2017)	1799088613 (Feb. 8, 2018)
17281301	UBTA-UBET Communications, Inc	FY 2017 FCC Form 462 for FRN 17281301 (June 30, 2017)	1799096201 (Sept. 8, 2017)

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Appendix B
Appealed FRN Claiming Government MSA Exemption

FRN	Service Provider	FCC Form 466
17275101	ConvergeOne, Inc.	FY 2017 FCC Form 462 for FRN 17275101 (June 30, 2017)

EXHIBIT 3



Rural Health Care

[USAC Home](#) [Rural Health Care Program](#) [Healthcare Connect Fund Program](#) [Consortia](#) [Step 4: Prepare for Competitive Bidding](#) [Exemptions](#)

STEP 4 PREPARE FOR COMPETITIVE BIDDING

[STEP 3](#) | [STEP 5](#)

Exemptions

Applicants that meet one of the following criteria are exempt from submitting the FCC Form 461 and participating in the competitive bidding process. The applicant is:

1. Seeking support for \$10,000 or less of total undiscounted eligible expenses for a single year (note that applicants selecting this option cannot also request multi-year funding commitments)
2. Purchasing services from a master service agreement (MSA) negotiated by a federal, state, Tribal, or local governmental entity on its behalf, and which was awarded pursuant to applicable competitive bidding requirements
3. Requesting support using contracts previously endorsed by USAC (MSAs under the Pilot Program or the HCF Program)
4. Has an active contract [deemed evergreen](#) for the RHC Program (for the life of the contract)
5. Using a contract negotiated under the Schools and Libraries (E-rate) Program

Applicants that do not meet any of the exemptions above are required to competitively bid for services and submit the FCC Form 461.

Applicants that are required to competitively bid for services should determine their service needs, prepare an RFP if applicable, and develop evaluation criteria. The evaluation criteria are used to select the most cost-effective service provider before submitting the FCC Form 461.

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